

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 93-517-W/S - ORDER NO. 93-868 ✓  
SEPTEMBER 15, 1993

IN RE: Application of Lake Keowee Utility        ) ORDER  
      Systems, Inc. for Approval of a        )  
      Transfer of the Water and Sewer        )  
      Facilities in Keowee Key Subdivision    )  
      in Oconee County from Realtec, Inc.,    )  
      and Exemption from Regulation as        )  
      a Homeowners Association.            )

This matter comes before the Public Service Commission of South Carolina (the Commission) on several procedural issues raised by various parties in the Application for a transfer of the water and sewer facilities in Keowee Key Subdivision in Oconee County from Realtec, Inc., and exemption from regulation as a Homeowners Association.

First, the Lake Keowee Utility Systems, Inc. (the Applicant) petitions this Commission for a clarification and/or waiver of 26 S.C. Code Ann. Regs. 103-502.3 and 103-702.3. (This is the property owners' group.) The Petition requests either a declaration of the Commission that the Applicant has met the requirements of R. 103-502.3 and 103-702.3, or in the alternative, that this Commission waive the requirements of those regulations. The Commission has determined that it will take this Petition under advisement and rule on it in the final Order in this case. The Commission believes that the parties will present evidence and

arguments in any hearing that may be held that may shed additional light on the Petition.

Second, Keowee Key Utilities, Inc. (KKUI) makes two preliminary motions in its Petition to Intervene. First, KKUI submits that the Application should not be accepted for consideration by the Commission on one or more of several grounds. KKUI alleges that the Application is, in essence, a rate Application, and that none of the financial data required to be filed with such an Application has been supplied. The Commission believes that the Application, as filed, is simply an Application for a transfer, and exemption from Commission jurisdiction, and therefore, none of the financial data required with a rate Application need be required. Second, KKUI alleges that no effective Water and Sewer Asset Purchase Agreement is attached to the Application, and therefore, the Application is incomplete. The Commission has examined the Application and believes that the full agreement is present with the Application. Further, KKUI states that the Declaration of Protective Covenants is missing every other page in the Application. Although that was initially true, it should be noted that the Applicant has now filed the remaining pages with the Commission. Further, KKUI states that the Consent Statement required from each lot owner, under R.103-502.3 and R.103-702.3 has not been submitted. It should be noted that the prior-mentioned Petition and Waiver submitted by the Applicant addresses this requirement, and as stated, this Petition shall be ruled on in the final Order of this Commission.

Finally, KKUI submits that the Application is incomplete, in that the Applicant has no permit from the Department of Health and Environmental Control (DHEC) to operate the system as required by R.103.502.3 and R.103-702.3. It should be noted that the Application contains a July 23, 1993 letter from Henry E. Gibson of DHEC, which states that DHEC intends to transfer the present Realtec permit to the Applicant. Therefore, although a permit is not included with the Application, it is clear that DHEC intends to transfer the presently existing Realtec permit to the Applicant. For these reasons, the Motion to reject the Application is denied.

Second, KKUI also requests that Commission action on the instant Application be stayed, pending a resolution of a foreclosure action presently pending in the U.S. District Court in Anderson, South Carolina, and further, that the Application be stayed, pending resolution of the State Circuit Court Appeals in the prior transfer case.

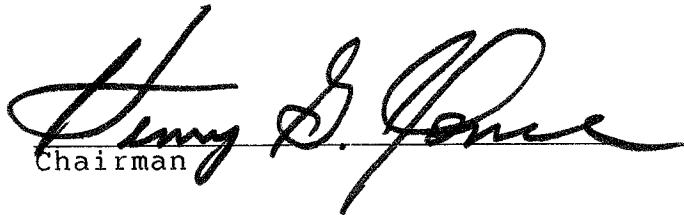
The Commission has reviewed this matter and believes that a foreclosure action is certainly a matter which would be considered in any action before this Commission, but it is not a matter, however, which should warrant a Stay of the proceedings in this case. We believe that the matter of the foreclosure can be considered in any hearing that may be held in this case. Further, the Commission does not believe that a Stay, pending appeals of the original KKUI and Realtec case is warranted in this case, since the transfer proposed by the Applicant is an entirely

different matter than the matter under appeal. Therefore, KKUI's Motion for a Stay is denied.


IT IS THEREFORE ORDERED THAT:

1. The Commission shall hold in abeyance any decision on the Petition of Lake Keowee Utility Systems, Inc. for Clarification and/or Waiver.
2. That the Motions of KKUI for refusal of the Application by this Commission, and for a Stay are hereby denied.
3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)